



In the Matter of:

WILLIAM B. FAUST,

ARB CASE NO. 98-078

COMPLAINANT,

**ALJ CASE NOS. 92-SWD-2
93-STA-15**

v.

DATE: March 31, 1998

CHEMICAL LEAMAN TANK LINES, INC.,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

**FINAL ORDER APPROVING SETTLEMENT
AND DISMISSING COMPLAINT**

Complainant, William B. Faust (Faust), alleged that Respondent, Chemical Leaman Tank Lines (CLTL), violated the employee protection provisions of two statutes: the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. §9610 (1988), and the Surface Transportation Assistance Act of 1982 (STAA), 49 U.S.C.A. §31105 (West 1995).

The parties seek approval of their settlement agreement and dismissal of the complaint. We grant the request.

BACKGROUND

In a December 1995 Recommended Decision and Order, the Administrative Law Judge (ALJ) recommended dismissal of the consolidated CERCLA and STAA complaints. The ALJ forwarded the case file to the Secretary of Labor for review and issuance of a final decision.

The Secretary did not know that the parties reached a purported settlement of the complaints in February 1996. Two months later, the Secretary issued a decision in which he dismissed the CERCLA complaint and found that Faust had established a violation of the STAA (April 1996 Decision). The Secretary ordered CLTL to reinstate Faust to his former position

and remanded the case to the ALJ for a recommendation on the amount of damages to which Faust was entitled.

CLTL moved to vacate the April 1996 Decision on the ground that the parties had settled the complaints. In a June 1996 Order, the Board^{1/} denied the motion because the Secretary had not entered into the settlement agreement, as the STAA requires: “Before the final order is issued, the proceeding may be ended by a settlement agreement made by the Secretary, the complainant, and the person alleged to have committed the violation.” 49 U.S.C. §31105(b)(2)(C). The Board explained that “[p]ublic policy demands that settlement agreements between the parties of a discrimination complaint filed under the federal employee protection statutes be reviewed by the Secretary of Labor (or his designee) to determine whether the terms are a fair, adequate and reasonable settlement of the complaint.” June 1996 Order, slip op. at 3.

The ALJ, on remand, stayed the proceedings while the parties arbitrated the issue of whether Faust had violated the terms of the settlement agreement when he failed to forward the agreement to the Secretary of Labor for approval. The arbitrator found such a violation and ordered Faust to submit a fully signed copy of the agreement to the Secretary together with a letter urging approval of the settlement agreement. *See Arbitrator’s Opinion and Award*, slip op. at 6, attached to December 31, 1997 letter from Faust’s counsel to the Secretary.

Consistent with the arbitration award, Faust has asked the Secretary to approve the settlement agreement and CLTL concurs. At our request, the ALJ returned the record for review along with the settlement agreement.

DISCUSSION

Since the Secretary has dismissed the CERCLA complaint, we will consider the settlement agreement under the STAA only. The agreement appears to encompass the settlement of matters arising under various laws, only one of which is the STAA. For the reasons set forth in *Poulos v. Ambassador Fuel Oil Co.*, Case No. 86-CAA-1, Sec. Ord., Nov. 2, 1987, slip op. at 2, we have limited our review of the agreement to determine whether its terms are a fair, adequate, and reasonable settlement of the allegation that CLTL violated the STAA.

Paragraph 5 of the agreement provides that the parties shall keep its terms confidential. We have held in a number of cases with respect to confidentiality provisions in settlement agreements that the Freedom of Information Act, 5 U.S.C. §552 (1988) (FOIA) “requires agencies to disclose requested documents unless they are exempt from disclosure” *Coffman v. Alyeska Pipeline Services Co. and Arctic Slope Inspection Services*, Case No. 96-TSC-5, Final

^{1/} Shortly after the issuance of the April 1996 Decision, the Secretary transferred to the Administrative Review Board the authority to issue final decisions under the STAA and a number of other statutes. Secretary’s Order No. 2-96 (Apr. 17, 1996), 61 Fed. Reg. 19978 (May 3, 1996).

Order Approving Settlement, June 24, 1996, slip op. at 2-3; *see also Ratliff v. Airco Gases*, Case No. 93-STA-5, Sec. Final Order Approving Settlement, June 25, 1993, slip op. at 2 (parties' submissions become part of record and are subject to the FOIA).

The records in this case are agency records which must be made available for public inspection and copying under the FOIA. In the event a member of the public makes a request for inspection and copying of the record of this case, the request must be responded to as provided in the FOIA. If an exemption is applicable to the record in this case or any specific document in it, the Department of Labor would determine at the time a request is made whether to exercise its discretion to claim the exemption and withhold the document. If no exemption were applicable, the document would have to be disclosed.

Department of Labor regulations provide specific procedures for responding to FOIA requests, for appeals by requesters from denials of such requests, and for protecting the interests of submitters of confidential commercial information. 29 C.F.R. Part 70 (1997).^{2/}

We find that the agreement, as construed, is a fair, adequate, and reasonable settlement of the allegation that CLTL violated the STAA. We APPROVE the settlement agreement and DISMISS the STAA complaint.

SO ORDERED.

DAVID A. O'BRIEN

Chair

KARL J. SANDSTROM

Member

^{2/} Pursuant to 29 C.F.R. §70.26(b), submitters may designate specific information as confidential commercial information. When FOIA requests are received for such information, the Department of Labor shall notify the submitter promptly, 29 C.F.R. §70.26(e), the submitter will be given a reasonable period of time to state its objections to disclose, *id.*, and the submitter will be notified if a decision is made to disclose the information. 29 C.F.R. §70.26(f). If the information is withheld and the requester files suit to compel disclosure, the submitter will be notified. 29 C.F.R. §70.26(h).